IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.472 OF 2000

Prabhakar Pandurang Tambe)
)
aged 30 years, permanently)
residing at Jay Ambe Society)
Jay malhar Nagar,Khandoba Tekdi)
Golibar Road, Ghatkopar (West))
Mumbai-400 086)
Presently at Yerwada Central)
Prison)..Appellant

V/s.

The State of Maharashtra)..Respondent

Mrs.Sharmila Kaushik for the appellant.

Mrs.V.R.Bhosale, Addl.Public Prosecutor for the Respondent/State.

Coram : R.M.LODHA &
R.S.MOHITE,JJ

Date : 11.02.2005
and
14.02.2005.

Oral Judgment :- (Per : R.S.Mohite,J)

1. The appellant Prabhakar Pandurang Tambe (Hereinafter referred to as the accused) has preferred this appeal seeking to quash and set aside the Judgment and Order dated 27.4.2000 passed by the Additional Sessions Judge, Gr.Bombay in Sessions Case No.716/1998. By the impugned Judgment and order the Additional Sessions Judge Gr.Bombay has convicted the accused for an offence punishable

under Section 302 of the IPC and has sentenced him to under-go imprisonment for life and also to pay a fine of Rs.3000/-, in default to suffer further R.I. for 6 months.

2. The prosecution case in brief was as under :-

(a) That accused Prabhakar Pandurang Tambe and the deceased Rajendra Ingawale were known to each other and were on visiting terms. The deceased was the son of (PW 2) Pundalik Ingole and he was residing alongwith his father at Jay-Ambe Society, Jay Malhar Nagar, Khandoba Tekdi, Ghatkopar (East).

(b) On 19.3.1998 at about 9.30 P.M. the accused, his father and his mother took meals at about 9.30 P.M. On that day there was a birthday party of the son of one Mahendra Pawar and the accused who used to undertake electrical lighting jobs, after taking his meals told his father Pundlik that he would go to the house of Pawar to remove the lighting put by him.

(c) That PW 3 Ganesh Shinde was a person residing at Sainath Nagar road, Bandle Chawl in Ghatkopar (East). He knew the accused as well as the deceased. During those days the accused Prabhakar Tambe along with his wife were residing in the house of one Anant Ramane, which house was situated in the

neighbourhood of PW 3 Ganesh Shinde. On 19.3.1998 PW 3 Ganesh Shinde was sleeping in his house. At about mid-night he heard the shouts of somebody saying "chor chor". Therefore, he opened the door and at that time he saw that accused Prabhakar was assaulting a boy with an iron rod. People from the vicinity asked him to go away therefore, the accused dragged the boy. The boy had sustained bleeding injuries. He saw the accused dragging that boy towards Golibar road, upto Gurudarshan building.

(d) PW 4 Shankar Karape was a shop-keeper. He also knew the deceased Rajendra and accused Prabhakar. He states that the Ramane family was residing in his neighbourhood and that he was aware that the accused and his wife were staying in the house of Ramane. That on 19.3.1998 at about 1.30 A.M. he heard the shouts of "chor chor". He therefore, woke up his brother Arjun. He and his brother opened the door and went outside. At that time he saw that a crowd had collected there and also saw the accused assaulting the deceased with an iron pipe. The deceased had sustained bleeding injuries. The people who gathered there asked Prabhakar not to quarrel at that spot. Therefore, accused took the deceased towards Golibar road. He noticed that Rajendra was not able to walk.

(e) PW 1 Police Constable Ramesh Pawar was attached

to Ghatkopar police station from 8.00 P.M. on 19.3.1998 till 8.00 A.M. on 20.3.1998. At 5.40 A.M. on 20.3.1998 he received a telephone call from Ex-Councellor Narvekar who informed him that a dead body was lying in front of Gopal Krishna building in Jagdusha area. The station officer PSI Bankar passed on this information to PI Kate. Thereafter, PW 1 Ramesh, PW 9 PSI Bankar and PI Kate went in a police jeep to the spot where the dead body was said to be lying. They found the dead body of a male person and blood stains on the road and at the location. Two panchas were called (one of whom was PW 8) and a spot-cum-inquest panchanama (Exh.22) was drawn. While the panchanama was in progress they found an electric bill in the name of Pundlik in the pocket of the dead person. Pundlik was traced and called there. He identified the dead body as that of his son Rajendra. The dead body was then removed to the hospital for a post mortem. The statement of Police Constable Ramesh was then recorded in the police station and the same was treated as a FIR and PW 9 PSI Pravin Bankar registered an offence under Section 279 read with section 304-A of the IPC and commenced the investigation.

(f) On 20.3.1998 PSI Bankar attached the clothes of the deceased under a panchanama (Exh.14). He recorded the statement of some witnesses including the father and mother of the deceased and

immediately on the next date i.e. on 21.3.1998 he handed over the investigation to PW 10 PI Atmaram Tawde.

(g) On 22.3.1998 the father of the deceased Pundlik voluntarily went to the police station and informed the police that he had a suspicion that the accused Rajendra had committed the murder of Rajan. PI Tawde therefore, recorded his supplimentary statement and on the basis of this supplimentary statement he converted offence under Section 302 of the IPC and submitted a report to the concerned Metropolitan Magistrate on the next date. On 24.3.1998 PI Tawde recorded the statement of eye witnesses to the incident including PW 3 & PW 4. On that day he received a message from the crime branch that the accused Prabhakar had been apprehended and therefore he arrested accused and obtained his police custody. On 25.3.1998 while the accused was in police custody, he showed his willingness to make a statement. PW 10 PI Atmaram Tawde therefore, called 2 panchas and accused made a statement relating to an iron pipe. In pursuance of this panchanama the accused led the police to Golibar road near Ambika siddhi building and he took out an iron pipe from the heap of garbage by the side of the road. This pipe was attached under a panchanama (Exh.20) and it was found to be stained with blood. Thereafter, the police party and the accused

returned to the police station. At the police station once again the accused showed his willingness to make another statement relating to the blood stained clothes concealed by him. Another memorandum panchanama (Exh.16) was drawn and in pursuance thereof the police party proceeded to Chintamani society, situated in Sainagar area and arrived at the house of Taramati the sister of the accused. Accused entered in that house and took out four articles from below the cot. These articles were a quilt, pillow cover, shirt and pant. All these articles were attached by the police under a panchanama (Exh.17). On 26.3.1998 PI Tawde sent the accused to Nagpada hospital for taking his blood sample. Doctor took the blood sample of the accused and sent the same to the Chemical Analyser. On 16.5.1998 PI Tawde received the report of the blood sample of the accused and he was found to have 'O' blood group. On 13.4.1998 PI Tawde sent a forwarding letter dated 13.4.1998 alongwith seized articles to the Chemical Analyser for examination. He received the Chemical Analyser's report on 4.9.1998. The Doctor who had performed the post mortem on the body of the deceased had taken blood samples and the same had been sent to the Chemical Analyser through a police constable. The Chemical Analyser sent a copy of his report to PI Tawde. Ultimately, after completion of investigation, PW 10 PI Atmaram Tawde filed a charge-sheet against the

accused on 16.6.1998.

3. At the stage of the trial the prosecution examined as many as 11 witnesses to prove its case. The prosecution also produced several documents in support of its case. The defence did not examine any witness. However from the questions asked in the cross-examination of the eye witnesses as also from the statement of the accused under Section 313 of Cr.P.C., it appears that the case of the accused is one of total denial coupled with the fact that Rajendra must have been beaten by PW 3 Ganesh Shinde and some other persons because he had attempted to commit theft in the locality.

4. The sum and substance of the contentions and the arguments made by the Advocate for the accused was that the 2 eye witnesses PW 3 Ganesh Shinde & PW 4 Shankar Karpe were not worthy of belief. The record indicated that although these two witnesses claimed to be an eye witnesses, they had not approached the police for a period of 4 days and their statements had been recorded by the police as late as 24.3.1998. It was contended that though Ganesh PW 3 had given some excuse for not going to the police, the excuse on the face of it appear to be a lame one. In so far as PW 3 Ganesh was concerned, he claimed to know the accused but had tried to say that he did not approach the police because he was

afraid of him. It was contended that the nature of the medical evidence and the circumstances found at the spot where the dead body was ultimately found clearly indicated that the possibility of the vehicular accident could not be ruled out. It was contended that the finding of blood of 'B' group on the shirt of the accused and on the iron rod were not clinching circumstance because the iron rod was discovered from an open garbage pit which was accessible to anyone and also because the police had 2 bottles of the blood of the deceased in their custody on 25.3.1998, when the accused was said to have led the police to discover these articles. It was contended that no blood was found on the spot which was being spoken of as the place of the assault by the eye witnesses PW 3 Ganesh Shinde & PW 4 Shankar Karpe. It was lastly contended that the evidence of PW 2 Pundlik Ingole indicated that the accused had been involved in this crime merely on suspicion. On this footing it was argued that the Appeal deserved to be allowed and the accused deserved to be acquitted.

5. The learned Additional Public Prosecutor supported the reasoning and the conclusions reached by the trial court. She submitted that the 2 eye witnesses had rightly been believed by the trial Court. She further submitted that the discovery of an iron rod which contained the blood group of the

deceased i.e. ‘B’ as well as discovery of clothes at the behest of the accused, one of which contained blood of ‘B’ group was a clinching circumstance against the accused particularly as the blood group of the accused was found to be of ‘O’ group. It was contended that the accused had not given any explanation about the blood of ‘B’ group being found on the iron rod as well as on his shirt. On this footing it was argued that the conviction and sentence which was awarded by the trial Court was proper and that this was not a fit case where we should interfere in an Appeal.

6. After hearing both the sides and after perusing the record, we now proceed to deal with the evidence relied upon by the prosecution in the present case. We would first like to deal with the evidence of the 1st eye witness i.e. (PW 3) Ganesh Shinde. We find that it would be unsafe to base a conviction to the testimony of this witness for the following reasons. (PW 3) Ganesh Shinde claims to know both, the accused Prabhakar and deceased Rajendra. He knew that deceased was on visiting terms with the accused Prabhakar. Yet surprisingly in his examination-in-chief he claims to have seen the accused Prabhakar assaulting a boy with an iron rod. He claims that he came to know on the next date that the boy who has been assaulted was Rajendra. We find it difficult to believe that this witness

having seen the incident, would have failed to state that the person who was being beaten was recognised by him as Rajendra. This witness has chosen not to disclose his knowledge about the incident to anybody till 24.3.1998. He explains that he did not go to the police because he was afraid of the accused. He has not said anything as to why he would feel afraid of accused Prabhakar and infact in his cross-examination he gave a categorical admission that he had good relations with the accused. He states that there were a number of people from the vicinity at the spot and they asked Prabhakar to go away from that area. None of these persons have been examined by the prosecution. The other eye witness by name Shankar Karpe (PW 4) also does not talk about the presence of (PW 3) Ganesh Shinde at the spot.

7. The next eye witness is (PW 4) Shankar Karape. Unfortunately his evidence also does not inspire any confidence. Though the incident took place on 20.3.1998, this witness has not disclosed about the incident to anyone and his police statement has been recorded on 24.3.1998 i.e. after delay of about 4 days. In his cross-examination this witness stated that the police had come to his house to record his statement. In the next breath he changed his stand and stated that he was taken to the police station and his statement was recorded there. He was asked

the question as to whether he knew that the deceased had entered into the house of Ramane and was mis-beheaving with the wife of the accused Prabhakar. He evasively stated that he did not know. However, it is his categorical version that at about 1.30 in the night on 20.3.1998 he heard the cries ("chor chor"). The hearing of such a cry is in fact consistent with the defence that Rajendra had entered into a house of the vicinity for the purposes of theft. The witness claims that on hearing the cries of ‘chor chor’, he had woken up his brother Arjun. He claims that his brother came outside alongwith him. The prosecution has not examined his brother Arjun. From his evidence it is also evident that PW 4 Shankar actually resides in Ghatkopar (West) whereas the scene of offence is situated in Ghatkopar (East). This witness does not shed any light as to what he was doing in Ghatkopar (East) when he has closed his grocery shop on 19.3.1998 at 10.30 PM. In the normal course of events, this witness would have proceeded to his residence and would not be in the vicinity of his grocery shop.

8. Having found that it would be risky to base a conviction on the evidence of the two eye witnesses i.e. PW 3 Ganesh Shinde and PW 4 Shankar Karape, we now proceed to examine the evidence relating to discovery of blood stained articles i.e. a printed

shirt and iron pipe at the behest of the accused. The discovery relating to iron pipe is said to have been made on a memorandum recorded at 2.00 PM on 25.3.1998. PW 7 Anil Bendal states that on 25.3.1998 at about 2.00 PM he was called at the Ghatkopar police station. At the police station, he was witness to a memorandum given by accused to the effect that the iron pipe which was used by him at the time of committing murder was kept by him and he would hand it over. Thereafter, he, accused and the police staff went to Golibar road by police van. The accused requested that the vehicle be stopped near Ambika Siddhi building. He then went towards a nala. There was a heap of garbage. Accused went forward and took out an iron pipe which was lying in the garbage and handed the same to the police. The police recorded the fact of discovery and seizure under a separate panchanama (Exh.18). On the same day i.e. 25.3.1998 at 8.00 PM accused is said to have made a 2nd statement. PW 6 Sandip Waghmare states that he was called to the Ghatkopar police station at 8.00 PM in the night. In the police station, in his presence the accused made a statement that he would hand over the clothes which were on his person at the time of committing of the murder. They all got into the police vehicle. The accused asked that the vehicle be stopped near a pan shop in that area. They all alighted and the accused led them to the house of one lady by name

Taramati, who was present in the house. The accused went into the house and took out some articles from under a cot. These articles were a pant, shirt, pillow cover and quilt. The police seized these clothes under apanchanama (Exh.17). The clothes were wrapped in a separate paper and the wrappers were sealed.

9. From amongst the articles that were seized at the behest of the accused, blood of 'B' group i.e. the group of the deceased was found on the iron pipe and the full shirt said to belong to the accused. Normally speaking this would have been a strong circumstance against the accused. However from the record we find that on the date of the incident i.e. on 20.3.1998, the police had obtained from the Medical officer 2 bottles of the blood of the deceased for the purpose of Chemical analysis. One bottle was obtained for determining if there was any alchohol consumed by the deceased and the 2nd bottle had been obtained in order to determine the blood group of the deceased. The record indicates that these 2 bottles were delivered to the Forensic Science Laboratory on 4.4.1998 by a Police constable bearing buckle No.27984. These facts are evident from the Chemical Analyser's report and these facts go to indicate that these 2 blood bottles were lying with the police from 20.3.1998 till 4.4.1998. There is nothing to indicate that as to whether these

blood bottles were kept in a sealed condition or as to when or by whom they were sealed. The police constable who had carried these blood bottles to the Chemical Analyser, has not been examined. No other police witness who was responsible for the storage and sealing of these 2 bottles has been examined. Thus in our view, it would be dangerous to rely upon these circumstances as pieces of circumstantial evidence to convict the accused.

10. Yet another important circumstance which negates the prosecution story is the finding of a linear imprint abrasion on the right infra exillary region and the infra scapular region above down and medially over 18 x 16 cm. region and abrasion on right flogs linear 13 x 6 cms., on the body of the deceased. The learned Addl.Public Prosecutor was unable to explain as to why an imprint abrasion was found on the dead body. The doctor has categorically opined that these abrasions alongwith all other were antemortem in nature. We find from the spot panchanama that the dead body of Rajendra was found in the middle of 30 feet road. Blood was found on the road for a distance of 15 feet along the road. Tyre marks were found near a gutter under construction on the side of the road. Blood stains were also found on the wall of the gutter. These are circumstances which indicate that a vehicle must have run over the deceased while he was still alive,

causing antemortem linear imprint abrasions. In our view, a linear imprint abrasion is unlikely to be caused by an ordinary iron rod. It is more likely that it was caused by the tyres of the vehicle running over the accused while he was still alive. The linear imprint abrasions look to us like a "primary impact injuries" caused by a vehicle. The following paragraph from the book "Principles of Forensic Medicines" by Apurba Nandy relating to primary impact injuries would be of relevance :-

. Primary impact injuries -

. Primary impact injuries are caused when the vehicle hits the victim say a pedestrain, for the first time, to knock him down. <u>These injuries are very much important to detect the offending vehicle, because, being the result of the impact by the vehicle, these injuries may bear the design of the part of the vehicle causing the injuries, in the form of imprint abrasion or patterned bruise</u>. Thus, if the front of the vehicle strikes the body, the design of the grill of the vehicle may be imprinted on the body of the victim. The height of the primary impact injury on the body of the victim by some particular part of the body of the vehicle may give an idea about the height of the vehicle.

(emphasis provided)

11. 4 days after the incident the police recorded the statement of PW 3 Ganesh Shinde and PW 4 Shankar Karape. These witnesses talked about an assault on the deceased at a place at some distance from where the body of Rajendra was ultimately discovered. the Investigating officer has not made any efforts to make a panchanama relating to the spot where Rajendra was said to have been assaulted. This would have been necessary specially because the eye witnesses talked about seen Rajendra bleeding from his injuries.

12. In the circumstances, the Judgment and order passed by the Additional Sessions Judge, Gr.Bombay on 27.4.2000 in Sessions case No.716/1998 deserves to be and is quashed and set aside and the appellant (accused) Prabhakar Pandurang Tambe is hereby acquitted of all charges against him. The fine, if paid, may be refunded to him.

. Appeal stands allowed of accordingly.

(R.M.LODHA,J)

(R.S.MOHITE,J)